

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID SUTTON, JR.,

Plaintiff-Appellee,

v

CITY OF OAK PARK and G. ROBERT  
SEIFERT,

Defendants-Appellants.

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FOR PUBLICATION

May 14, 2002

9:05 a.m.

No. 229640

Oakland Circuit Court

LC No. 00-021310-AW

Updated Copy

August 16, 2002

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

WILDER, J., (*concurring.*)

I join with the majority in finding that the records at issue in this case are exempt from disclosure under MCL 15.243(1)(s)(ix). I write separately to explain why I conclude that the trial court had discretion to consider this ground for dismissal of plaintiff's action asserted in defendant's motion for reconsideration, despite defendant's failure to assert this ground in its motion for summary disposition.

MCR 2.119(F)(3) provides:

(3) *Generally, and without restricting the discretion of the court*, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court was misled and show that a different disposition of the motion must result from correction of the error. [Emphasis added.]

Here, the trial court erred in failing to recognize its discretion to address the ground asserted in defendants' motion for reconsideration. See *Kowalski v Fiutowski*, 247 Mich App 156, 165-166; 635 NW2d 502 (2001). The trial court's failure to recognize its discretion is particularly significant here because the record clearly establishes that all the *evidence* necessary to support summary disposition in favor of defendants based on the personnel records exemption, MCL 15.243(1)(s)(ix), had been submitted to the trial court as exhibits attached to the motion for summary disposition and were available to the trial court as it conducted its in camera hearing. Thus, while a party may be precluded from submitting new *evidence* to the trial court in support

of a motion for reconsideration, see *Maiden v Rozwood*, 461 Mich 109, 126, n 9; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 366, n 5; 547 NW2d 314 (1996) (in ruling on a motion for summary disposition, a court considers *the evidence then available to it*), a party raising a newly asserted *basis* for dismissal in a motion for reconsideration does not necessarily run afoul of *Maiden* and *Quinto* in the appropriate circumstances.

/s/ Kurtis T. Wilder